AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.2053 of 2003

Petitioner		Murari Ram Sahu aged about 34 years S/o. Late Shri Budhram Sahu, R/o Vill. Kaldabari, Post Mahrum, Thana Dongargaon, District Rajnandgaon (C.G.)
	Versus	
Respondents	1.	The State of Chhattisgarh Through its Secretary, Deptt. of Panchayat Raipur C.G.)
	2.	The Collector Rajnandgaon (C.G.)
	3.	Chief Executive Officer Janpat Panchayat Chhuriya Distt. Rajnandgaon (C.G.)
	4.	Gram Panchayat Through its Sarpanch Gram Panchayat Kaldabari, Distt. Rajnandgaon (C.G.)

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Parag Kotecha, Advocate for the petitioner.

Shri Sandeep Dubey, Govt. Advocate for the Respondents No. 1 and 2.

Shri Ranbir Singh Marhas, Advocate for the Respondent No. 3.

ORAL ORDER

(13th January, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The petitioner was appointed as Panchayat Karmi in the year 1995 in Gram Panchayat Kaldabari, District-Rajnandgaon (C.G.). The petitioner, thereafter, was appointed as Panchayat Secretary under the provisions of Section 69 (1) of the Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as the 'Adhiniyam 1993'), by order dated 10.08.2000 (Annexure P-1). Respondent No.4 Gram

Panchayat by its resolution dated 25.04.2003, without issuing any show cause notice to the petitioner resolved to remove the petitioner from the post of Panchayat Karmi. The petitioner was thereafter served a show cause notice on 3.6.2003 (Annexure P/3) by the Chief Executive Officer, Janpad Panchayat, Chhuriya, District-Rajnandgaon, i.e. (Respondent No. 3), as to why his services be not terminated. The petitioner was directed to appear in a special meeting of Gram Sabha on 13.06.2003.

2. The petitioner filed his reply on 6.06.2003 (Annexure P-5). The respondent No. 4 convened the special Gram Sabha meeting on 13.06.2003, and decided to terminate services of the petitioner without considering the reply of the petitioner to the show cause notice. The petitioner has filed this petition under Article 226/227 of the Constitution of India, praying that the order/resolution dated 13.06.2003 (Annexure P-6) be quashed/set aside and the petitioner be permitted to work as Panchayat Karmi/Secretary.

3. Shri. Parag Kotecha, learned counsel appearing for the petitioner submits that Rule 7 of Panchayat Services (Discipline & Appeal) Rules 1999 (hereinafter referred to as "the Rules 1999"), provides for a proper formal enquiry by issuing show cause notice for imposition of major penalties as prescribed under Rule 5 (b) of the Rules 1999. It is further contended that the respondents have not complied with the statutory requirement of Rule 7 of the Rules 1999, before imposing major penalty by terminating services of the petitioner by order/resolution dated 13.06.2003.

4. Shri Ranbir Singh Marhas, learned counsel appearing for the respondent No. 3, i.e. The Chief Executive Officer, Janpad Panchayat, Chhuriya, submitted that the petitioner had abstained from attending the meeting of the Gram Sabha dated 25.04.2003, despite proper information was given to him. Learned counsel is not in a position to reply on the basis of the return filed by the respondent No. 3 that whether reply filed by the petitioner was considered or whether any departmental enquiry as contemplated in Rule 7 of the Rules 1999, had taken place.

5. Mr. Sandeep Dubey, learned counsel appearing for the respondents No. 1 & 2 supports and adopts the submissions made by respondent No. 3. In addition, learned counsel submits that the petitioner ought to have availed alternative remedy of filing statutory appeal as contemplated under Rule 15 of the Rules 1999.

6. I have heard learned counsel for the parties and perused all the documents appended to the writ petition as well as to the return filed by the respondents. This is a case where admittedly there is a gross violation of the principles of natural justice and statutory provisions of the Rules, 1999. The show cause notice was issued to the petitioner and the petitioner had also filed reply but no enquiry was conducted to find out facts as alleged in the show cause notice. There are serious allegations in the charge-sheet which remained unsubstantiated and proved, as no enquiry was held.

7. So far as availability of alternative remedy is concerned, it is rule of discretion, not of law. In the facts and circumstances

of the present case, wherein there is clear violation of statutory provisions of Rule 7 of the Rules 1999, it is not necessary to dismiss this petition on the ground of availability of alternative remedy.

8. Learned counsel for the petitioner with regard to the back wages submits that the petitioner was not gainfully employed elsewhere and this petition has been filed immediately on 25.07.2003. The petitioner has been restrained from working and deprived from salary thereof by illegal conduct of the respondents. The petitioner is entitled to 100% back wages. Per Contra, learned counsel for the respondents submit that the petitioner is not entitled to any back wages on the principle of 'no work no pay'. Admittedly the service of the petitioner was terminated without following the principles of natural justice and also without following the statutory provisions of the Rules 1999. The petitioner was restrained by the conduct of the respondents from working in service. Thus, the principle of 'no work no pay' will not be applicable. In the facts of the case, the petitioner is entitled to 50% back wages.

9. For the reasons stated above, the impugned order/resolution dated 13.06.2003 (Annexure P-6) is quashed and set-aside. The petition is allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge